## Mohamad Jamil bin Che Din & Anor v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO P-05–128 OF 2010
APANDI ALI, LINTON ALBERT AND ALIZATUL KHAIR JJCA
6 AUGUST 2013

*Criminal Procedure — Additional evidence — Application to adduce fresh evidence — Whether application failed to fulfill conditions laid down in R v Parks — Whether proposed evidence not capable of belief and not unavailable at trial — Whether 'additional' evidence attempt by witness to materially change previous testimony — Whether alleged threat/coercion to provide false testimony never raised at trial — No explanation why witness waited three years after trial until eve of appeal to say evidence at trial fabricated*

The appellants were convicted and sentenced to death by the High Court for trafficking in 135,549g cannabis, an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act'). According to the prosecution's evidence, a police party in ambush noticed the appellants and another man unloading gunny sacks from the boot of a car near a hut in a village. The police arrested the men and found the cannabis both in the gunny sacks and in the hut. At the outset of the hearing of their instant appeal against conviction and sentence, the first appellant applied under s 61 of the Courts of Judicature Act 1964 and s 317 of the Criminal Procedure Code ('CPC') to adduce additional evidence by recalling a prosecution witness, PW7. In an affidavit supporting the application, PW7 claimed he was forced by the investigating officer ('IO') in the case to falsely testify at the trial that he knew the first appellant and that he had lent him the car in which the cannabis was found. PW7 claimed in his affidavit that he was threatened that if he did not co-operate he would be similarly charged under s 39B of the Act.

**Held**, dismissing the application and the appeals and affirming the convictions and sentences:

(1) The first appellant failed to cumulatively fulfill all the conditions laid down in *R v Parks* [1961] 2 All ER 633. In particular, the proposed evidence was not credible in the sense it was not well capable of belief. It was not an exceptional circumstance for the court to exercise its discretion in the first appellant's favour (see para 8).

(2) The proposed additional evidence was not additional evidence in the real sense but was, in essence, a changed story. It was not additional evidence from a new witness. In the light of the lengthy cross-examination of PW7

at the trial, it could not reasonably be said that the 'additional' evidence was not available at the trial (see para 5(d)).

(3) PW7's testimony was subjected to lengthy cross-examination and it was recorded by the trial judge that his answers to counsel's questions were forthright and sincere. In contrast, there was hardly any serious cross-examination of the IO and, in particular, there was absolutely no suggestion that PW7 had been threatened or coerced to fabricate his testimony. There was no explanation in PW7's affidavit on why it took him about three years after his evidence at the trial to now say he did not lend the car, in which some of the drugs were found, to the first appellant (see para 5(a)–(c)).

(4) The trial judge had dealt with all the issues and correctly followed to the letter the procedures at all stages of the trial as mandated by ss 180 and 182A of the CPC. The appellants' defence was properly and adequately considered. The evidence against the appellants was overwhelming and the trial judge had come to the correct findings and conclusions (see paras 18–21).

**[Bahasa Malaysia summary**

Perayu-perayu disabitkan dan dihukum mati oleh Mahkamah Tinggi kerana mengedar kanabis sebanyak 135,549g, kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 ('Akta'). Mengikut keterangan pihak pendakwaan, pasukan polis dalam menyerang hendap melihat perayu-perayu dan seorang lelaki lain memunggah karung guni daripada but kereta berhampiran pondok di sebuah kampung. Polis menangkap lelaki-lelaki tersebut dan mendapati kanabis dalam kedua-dua karung guni di dalam pondok tersebut. Pada permulaan pendengaran rayuan mereka ini terhadap sabitan dan hukuman, perayu pertama memohon di bawah s 61 Akta Mahkamah Kehakiman 1964 dan s 317 Kanun Tatacara Jenayah ('KTJ') untuk mengemukakan keterangan tambahan dengan memanggil semula saksi pendakwaan, PW7. Dalam afidavit menyokong permohonan tersebut, PW7 mendakwa dia dipaksa oleh pegawai penyiasat ('IO') dalam kes tersebut untuk memberi keterangan palsu pada perbicaraan bahawa dia kenal perayu pertama dan dia telah meminjamkan kepadanya kereta di mana kanabis dijumpai. PW7 mendakwa di dalam afidavitnya yang dia diugut bahawa jika dia tidak bekerjasama dia akan didakwa begitu juga di bawah s 39B Akta.

**Diputuskan**, menolak permohonan dan rayuan-rayuan dan mengesahkan sabitan dan hukuman:

(1) Perayu pertama gagal untuk memenuhi secara kumulatif kesemua syarat-syarat yang dittetapkan di dalam kes *R v Parks* [1961] 2 All ER 633. Terutamanya, keterangan yang dicadangkan tidak boleh diterima

dalam erti kata ia tidak boleh dipercayai. Ia bukan keadaan luar biasa untuk mahkamah menjalankan budi bicaranya memihak perayu pertama (lihat perenggan 8).

(2) Keterangan tambahan yang dicadangkan bukan keterangan tambahan dalam erti kata sebenar tetapi pada asasnya adalah cerita yang ditukar. Ia bukan keterangan tambahan daripada saksi baru. Berdasarkan pemeriksaan balas yang panjang terhadap PW7 pada masa perbicaraan, ia tidak dapat dikatakan dengan munasabah bahawa keterangan tambahan tidak terdapat pada masa perbicaraan (lihat perenggan 5(d)).

(3) Keterangan PW7 adalah tertakluk kepada pemeriksaan balas yang panjang dan ia direkodkan oleh hakim perbicaraan bahawa jawapannya kepada soalan peguam adalah berterus terang dan jujur. Bertentangan, tidak terdapat apa-apa pemeriksaan balas yang serius terhadap IO dan terutamanya, tidak terdapat cadangan sama sekali bahawa PW7 telah diugut atau dipaksa untuk memalsukan keterangannya. Tiada penjelasan dalam afidavit PW7 mengapa dia mengambil masa lebih kurang tiga tahun selepas keterangannya pada perbicaraan untuk sekarang menyatakan dia tidak meminjamkan kereta tersebut kepada perayu pertama, di mana sebahagian dadah dijumpai (lihat perenggan 5(a)–(c)).

(4) Hakim perbicaraan telah mempertimbangkan dengan semua isu dan dengan betul mengikut prosedur pada semua peringkat perbicaraan seperti yang dimandatkan oleh ss 180 dan 182A KTJ. Pembelaan perayu-perayu adalah dipertimbangkan secara betul dan secukupnya. Keterangan terhadap perayu-perayu adalah sangat banyak dan hakim perbicaraan telah mencapai kepada dapatan dan keputusan yang betul (lihat perenggan 18–21).]

**Notes**

For a case on application to adduce fresh evidence, see 5(1) *Mallal's Digest* (4th Ed, 2012 Reissue) para 158.

**Cases referred to**

*Che Din bin Ahmad v PP* [1976] 1 MLJ 289 (folld)
*Lo Fat Thjan & Ors v PP* [1968] 1 MLJ 274, FC (refd)
*Megat Halim Megat Omar v PP* [2008] MLJU 647; [2009] 1 CLJ 154, CA (refd)
*Mohamed bin Jamal v PP* [1964] MLJ 254, FC (refd)
*Murugayah v PP* [2004] 2 MLJ 545; [2004] 2 CLJ 489, CA (refd)
*PP v Yuvaraj* [1969] 2 MLJ 89; [1968] 1 LNS 116, PC (refd)
*R v Parks* [1961] 3 All ER 633, CA (folld)

**Legislation referred to**

Courts of Judicature Act 1964 s 61
Criminal Procedure Code ss 180, 182A, 317
Dangerous Drugs Act 1952 ss 37(da), 39B(1)(a), 39B(2)

**Appeal from**: Criminal Trial No 45–36 of 2008 (High Court, Pulau Pinang)

*VS Kumar (VS Kumar & Co) for the first appellant.*
*Ameenuddin bin Ibrahim (VS Kumar & Co) for the second appellant.*
*Yusaini Amer bin Abd Karim (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.*

**Apandi Ali JCA (delivering judgment of the court):**

INTRODUCTION

**[1]** Both appellants were convicted and sentenced to death for the offence of trafficking in dangerous drugs, under s 39B(1)(a) and punishable under s 39B(2) of the Dangerous Drugs Act 1952. Originally, at the High Court, the appellants were charged together with another co-accused, Azhar bin Ismail. At the end of the trial the learned trial judge acquitted and discharged the said Azhar Bin Ismail. There is no appeal against that acquittal. The charge for which both appellants were convicted, reads as follows:

> Bahawa kamuber sama-sama, pada 2 Jun 2007, jam lebih kurang 7.45 pagi di Pondok Kandang Lembu sebelah Rumah PTB 5989, Jalan Abd. Kadir, Bukit Mertajam, di dalam Daerah Seberang Perai Tengah, di dalam Negeri Pulau Pinang, telah memperedarkan dadah berbahaya iaitu Cannabis seberat 135,549 gram. Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya, 1952 dan boleh dihukum di bawah seksyen 39B(2) Akta yang sama dibaca bersama seksyen 34 Kanun Keseksaan.

**[2]** On appeal, this court dismissed the appellants' appeal and affirmed the convictions and sentences against them. We shall now give our reasons for our decisions.

APPLICATION TO ADDUCE ADDITIONAL EVIDENCE

**[3]** At the outset of the hearing of the appeal, we have to deal with an application to adduce additional evidence, by the first appellant. The application was by way of a motion vide encl 15a and the additional evidence to be adduced was the recalling of prosecution witness at the High Court trial, SP7, Zabri bin Che Saad. The application was made pursuant to s 61 of the Courts of Judicature Act 1964 and s 317 of the Criminal Procedure Code. The motion was supported by the affidavit of the said Zabri bin Che Saad, which is herewith reproduced in full, and reads as follows:

AFIDAVIT SOKONGAN

(1) Saya, ZABRI BIN CHE SAAD (NO KP: 820428-07-5745) yang beralamat di No 1189, Kg Bagan Serai, 13500 Permatang Pauh dengan sesungguhnya berikrar dan menyatakan seperti berikut:

(2) Saya merupakan seorang saksi Pihak Pendakwaan dalam kes tersebut di atas. Saya telah memberikan keterangan palsu di Mahkamah Tinggi Pulau Pinang atas ugutan Pegawai Penyiasat dalam kes ini iaitu SP-8 iaitu C/Insp Ibaharim Bin Abdul Rahman.

(3) Pada 3/12/2009 saya telah dipanggil untuk memberikan keterangan bagi Pihak Pendakwaan di mana SP-8 telah mengarahkannya untuk memberi satu keterangan palsu di Mahkamah Tinggi. (Satu salinan Nota Keterangan saya ditunjukkan dan dieksibitkan sebagai Eksibit Z-1).

(4) Saya sesungguhnya menegaskan di sini bahawa saya tidak pernah kenal dengan Mohamad Jamil Bin Che Din dan tidak pernah pinjamkan kereta No pendaftaran KBD 7830 kepada Mohamad Jamil Bin Che Din. Saya telah dipaksa untuk memberi keterangan palsu di Mahkamah Tinggi oleh SP-8 di mana beliau telah mengugut saya jika saya tidak bekerja sama dengan beliau, maka saya juga akan dituduh di bawah seksyen 39(B) Akta Dadah Berbahaya. Saya tidak mempunyai pilihan lain selain memberi keterangan palsu di Mahkamah Tinggi untuk menyelamatkan diri saya. (Satu salinan Laporan Polis Central 5706/12 ditunjukkan dan di eksibit kan sebagai Eksibit Z-2).

(5) Surat Akuan yang telah diikrarkan oleh saya sememangnya telah memberi satu implikasi yang amat serius dimana saya telah memberi satu keterangan yang palsu di Mahkamah Tinggi berkaitan kereta Proton Wira KBD 7830 yang menjadi 'subject matter' yang amat penting di dalam ke sini. Ini adalah kerana, kes Pihak Pendakwaan berkait rapat dengan tempat di mana terjumpanya barang kes dadah di dalam kes ini. (Satu salinan surat akuan ditunjukkan dan di eksibitkan sebagai Eksibit Z-3).

(6) Saya dengan ini memohon kepada Mahkamah yang Mulia ini untuk dibenarkan untuk mengemukakan keterangan lanjut di dalam ke sini untuk mendapatkan keadilan di mana keterangan lanjut ini tidak dapat dikemukakan di Mahkamah Tinggi dan keterangan lanjut saya adalah relevan kepada isu-isu yang telah diputuskan oleh Yang Arif Hakim Mahkamah Tinggi dan keterangan lanjut ini adalah keterangan yang sebenar dan boleh dipercayai dan jika keterangan lanjut ini diberikan maka besar kemungkinan wujud satu keraguan yang munasabah di dalam kes Pihak Pendakwaan.

(7) Oleh yang demikian saya dengan rendah diri memohon kepada Mahkamah yang Mulia ini untuk membenarkan Permohonan ini demi keadilan.

Diikrarkan oleh]

Zabri Bin Che Saad]

Pada 12hb Nov 2012] t.t.

Pada pukul 2.40 pagi/petang]

Di Bukit Mertajam]

Di hadapan saya,

Nama:

MOHD DAUD BIN ABU BAKAR

Jabatan:

Mahkamah Majistret

Bukit Mertajam

…… t.t.……

Pesuruhjaya sumpah

Afidavit sokongan ini difailkan oleh Tetuan V.S. Kumar & Co No 48, Lorong Bayu Mutiara 12, Taman Bayu Mutiara, 14000 Bukit Mertajam.

**[4]** The respondent, public prosecutor filed an affidavit in reply. We do not intend to reproduce the affidavit in reply as it essentially touched on the basic principles in the exercise of discretion in an application to adduce additional evidence.

**[5]** We hear out the submissions from both parties in respect of the encl 15a application. Guided by the principles as enunciated by Parker CJ in *R v Parks* [1961] 2 All ER 633, we unanimously dismissed the application to adduce additional evidence. It is our finding in respect of the encl 15a application that:

(a) The deponent of the affidavit, Zabri bin Che Saad had given evidence at the trial at the High Court on 3 December 2009. His evidence on that day was very clear and he was subjected to a lengthy cross-examination (see: pp 182 to 186 of the appeal records) and the learned trial judge did enter a demeanor remark: 'Saksi adalah lurus dan jujur dalam menjawab soalan peguam' at p 184.

(b) That Zabri (PW7) had admitted in his affidavit that he lied when giving evidence at the trial on 3 December 2009 to the effect that now he is saying he did not lend the car (in which some of the drugs were found) to the first appellant. He explained that he was threatened by the investigating officer of the case, C/Insp Ibrahim (PW8). We noted that unlike the cross-examination of PW7, there was hardly any serious cross-examination of PW8 and in particular not a word to suggest any threat or coercion on PW7 to fabricate the story of lending the car to the first appellant (see: pp 221–222 of the appeal records).

(c) That there is not an iota of explanation by PW7 in his affidavit why it

took him about three years after giving evidence on oath at the trial, to come up with a statutory declaration and to subsequently lodged a police report on 28 October 2012; and

(d) That the proposed additional evidence is not an additional one in the real sense, but in essence a changed story. It is not an additional evidence from a new witness. In the light of the lengthy cross-examination of PW7 at the trial on 3 December 2009, it cannot reasonably be said that the evidence was not available at the trial.

**[6]** *R v Parks* laid down four basic principles on the taking of additional evidence, namely as stated in the judgment as follows:

> Those principles can be summarised in this way. First, the evidence that it is sought to call must be evidence which was not available at the trial. Secondly, and this goes without saying, it must be evidence relevant to the issues. Thirdly, it must be evidence which is credible evidence in the sense that it is well capable of belief; it is not for this court to decide whether it is to be believed or not, but it must be evidence which is capable of belief. Fourthly, the court will after considering that evidence go on to consider whether there might have been a reasonable doubt in the minds of the jury as to the guilt of the appellant if that evidence had been given together with the other evidence at the trial.

**[7]** The above statement of law in *R v Parks* has been adopted and applied by our courts (see *Mohamad bin Jamal v Public Prosecutor* [1964] MLJ 254; *Lo Fat Thjam & Ors v Public Prosecutor* [1968] 1 MLJ 274; *Che Din bin Ahmad v Public Prosecutor* [1976] 1 MLJ 289 and *Murugayah v Public Prosecutor* [2004] 2 MLJ 545; [2004] 2 CLJ 489) In particular we are further guided by the elaboration of the principles in the case of *Che Din bin Ahmad*, where Syed Agil Barakbah J (as he then was) stated that the conditions are cumulative and not in the alternative and it is for the appellant to satisfy the court that they have been fulfilled and that it is only in the most exceptional circumstances that the court will receive additional evidence.

**[8]** It is our judgment that the applicant of encl 15a have failed to cumulatively fulfill all the conditions as laid down in *R v Parks*. In particular we find that the proposed evidence is not credible evidence in the sense that it is not well capable of belief. In such circumstances, as explained in our findings in respect of the affidavit, we are of the view that this is not an exceptional circumstance for us to exercise our discretion in favour of the first appellant. As such the application vide encl 15a was dismissed.

We then proceeded to deal with the appeal proper.

FACTS OF CASE

**[9]** On 2 June 2007 acting on information received, at about 2.00am a police

party from the Anti-Narcotic Department of Bukit Aman, led by ASP Balasubramaniam (PW5) laid an observation along the road at Pekan Guar Chempedak. They were on a look-out for a Proton Wirabearing registration No KBD 7830 ('the said car'). At about 6.45am the police sighted the said car coming towards them from the direction of Yan, Kedah. The police party followed the said car in two separate vehicles. In the said car, there were three male persons. After following the said car for over an hour, along the North South Highway, the said car exited towards Kubang Semang, Bukit Mertajam, and proceed further along a laterite kampung road and stopped in front of a hut, near a cow shack. The said car was parked with its boot towards the hut and the front facing the road. It was observed by PW5 and his men that at that moment the boot of the said car was open and all the three men were near the boot of the said car. PW5 also saw two of the men were holding a gunny sack.

**[10]** In their excitement in following the suspects and in their haste to ambush them, the vehicle in which PW5 was in (a Kia Sorento) collided onto the left front part of the said car and the other police vehicle (a Gen 2) that was behind the Kia Sorento could not brake on time and collided into the rear of the Kia Sorento. The noise from the impact of the collisions alerted the three suspects and all of them bolted in different directions. The police gave chase and managed to apprehend them. The three men apprehended were the appellants and the other accused person Azhar, who was later acquitted by the trial court.

**[11]** All three of them were then brought to the said car. PW5 found a plastic multi-coloured gunny sack in the boot of the said car and another similar sack on the ground nearby. Both sacks were tied at the mouths and upon opening them, PW5 found each sack to contain 25 pieces of compressed slabs of dried leaves, suspected to be cannabis. Upon further search of the surroundings, PW5 discovered another similar plastic multi-coloured gunny sack, also filled with 25 pieces of compressed slabs of dried leaves; near the entrance of the hut. A search of the hut was made. In the hut, PW5 discovered two more similar plastic multi-coloured gunny sacks with each containing 23 slabs and 16 slabs of compressed dried leaves respectively. Further search of the hut was made and PW5 found a water container with 29 slabs of compressed dried leaves, also suspected to be cannabis. PW5 also recovered an empty plastic multi-coloured gunny sack in the hut.

**[12]** In all, the police recovered and seized 143 slabs of compressed dried leaves, suspected to be cannabis. A police report of the raid and seizure was made by PW5 which was produced and marked as exh P29. The 143 slabs of compressed dried leaves were later confirmed by the chemist, PW3, to be cannabis, with a total weight of 135,549g.

**[13]** In view of the above factual metrix of the case as stated above, the legal issues pertaining to this appeal are all settled laws. **A**

CONTENTIONS BY THE APPELLANTS

**[14]** Learned counsel for the first appellant put forward only one issue, namely the trial judge erred in failing to adequately consider the defence story of the first appellant. He further submitted that the appellant's defence was supported by the evidence of DW3, Azhar bin Ismail (the second accused), and in particular DW3's cautioned statement which was tendered and marked as exh D45. Learned counsel specifically referred to part of D45 (at pp 349–350 of the appeal records) which reads as follows: **B** **C**

> Pada 06/06/2007 jam lebih kurang 0745 hrs, semasa saya dari rumah selepas pergi beli barang makan di kedai di Bukit Mertajam. Saya terus pergi ke kandang lembu untuk cuci kandang lembu tu sebab saya ambil upah cuci kandang itu. Semasa saya dalam perjalanan hendak ke kandang lembu tu saya ada nampak sebuah kereta di depan kandang lembu tersebut. Saya nampak ada tiga orang macam sedang punggah barang masuk dalam kereta, saya pun tak tahu apa yang mereka punggah, saya pun pergi lihat apa mereka buat. Selepas saya sampai dekat dengan kereta tersebut tiba- tiba saya nampak ada tiga buah kereta sampai di tempat tu, saya tengok orang yang tengah punggah barang tadi telah lari dan saya pun ikut lari sama sebab saya tak tahu apa yang berlaku. Lepas orang dari tiga buah kereta tu bagi tau mereka Polis baru la saya tau Polis yang datang serbu tempat itu. Tiga orang yang lari tadi saya tidak kenal, yang saya kenal satu saja tapi tu pun tak rapat sangat. Saya pernah tengok dia datang kandang lembu tu tapi jarang-jarang, saya dengar orang panggil dia 'Mamu'. Tapi dia bukan jumpa dengan saya tapi dengan tuan punya kandang tu. Saya baru saja kerja cuci kandang lembu tu lebih kurang tiga bulan lebih, ini kerja sementara saja sebab saya sekarang pun ada kerja di kedai besi sebagai welder. Saya rasa saya kena naya sebab saya pun tak tahu apa-apa tentang perkara tu. Yang saya tahu selepas saya kena tangkap mereka bawa saya pergi kereta tempat tiga orang punggah barang tadi dan tunjuk barang dalam kereta tu dan bagitau itu ganja. Lepas itu Polis bawa saya balik ke balai. **D** **E** **F** **G**

**[15]** From a quick perusal of the learned judge's grounds of judgment, especially in paras 66–68 (from pp 58 to 64 of the appeal records) it is clear that what has been submitted by learned counsel for the first appellant was not correct. It is our finding that the learned trial judge had considered the first appellant's story and had rightly tested it with the evidence as narrated by the prosecution witnesses. The trial judge had also, in the course of his judge had rightly commented that the story of the first appellant going to the hut (pondok) together with the second appellant in a Kancil car was an afterthought as it was never suggested during the prosecution's case. We agree with the judge's appraisal of such evidence in such a manner, as it is trite law for the necessity to suggest the line of defence during prosecution's case (see *Megat* **H** **I**

*Halim Megat Omar v Public Prosecutor* [2008] MLJU 647; [2009] 1 CLJ 154). We, therefore cannot find any merit on the sole ground argued before us by learned counsel for the first appellant.

**[16]** Likewise, learned counsel for the second appellant, without even preparing any written submission, put forward one single contention in support of the appeal by the second appellant. The attack is on the alleged failure of the trial judge to consider whether the presumption of trafficking, under s 37(da) of the Dangerous Drugs Act has been rebutted or otherwise on a balance of probabilities. It was also submitted that there was no mention of the standard of proof in such a rebuttal. The complaint was in respect of what was written by the trial judge in his grounds and our attention was specifically drawn to what was written at p 67 of the appeal records, which reads as follows: 'Pembelaan di bawah seksyen 37(da) Akta Dadah Berbahaya, 1952'.

**[17]** With due respect, we must state that any grounds of judgment must be read in toto in order to properly appraise what was in the mind of the judge who wrote the grounds. A sentence in a lengthy and comprehensive grounds of judgment (as in this case, which was a 56 — page judgment) cannot be read in isolation. In this case, if learned counsel were to read para 62 of the judge's grounds of judgment (at p 54 of the appeal records) which reads as follows: '[62] Jika pihak pendakwaan bergantung pada sesuatu anggapan statutori bagi membuktikan sesuatu isu penting dalam pertuduhan, maka beban pembuktian atas tertuduh-tertuduh bagi mematahkan anggapan tersebut yang terpakai adalah pada tahap imbangan kebarangkalian (*Public Prosecutor v Yuvaraj* [1969] 2 MLJ 89; [1968] 1 LNS 116). Di dalam kes ini anggapan yang terpakai seperti yang telah mahkamah ini putuskan di akhir kes pendakwaan adalah anggapan di bawah seksyen 37(da) Akta Dadah Berbahaya 1952', it will be clear that there is no misdirection by the trial judge as to the applicable standard of proof required to rebut the statutory presumption under s 37(da).

CONCLUSION

**[18]** From the lengthy grounds of judgment written by the learned trial judge it can be concluded that the judge have dealt with all the issues and had correctly followed to the letter the procedures at all stages of the trial, as mandated by ss 180 and 182A of the Criminal Procedure Code. He had made findings of facts based on all the evidence adduced at the trial. It is therefore our judgment that there is no merit in the contentions by both appellants.

**[19]** We also find that the defence of all the accused persons, including that of the appellants, were properly and adequately considered.

**[20]** This being a capital punishment case, we have also taken the liberty to

consider all the issues raised in the petitions of appeal, although not submitted before us. Having so considered and after examination of all the evidence before us, we find that the evidence against both appellants are overwhelming.

**[21]** In that light we find that the trial court had come to correct findings and conclusions and thus we find no reason to disturb such findings and conclusions and corollary to that we also conclude that the convictions are safe.

**[22]** For the above reasons, we unanimously dismissed the appeals by both of the appellants. The convictions and sentences by the High Court are accordingly affirmed.

*Application and appeals dismissed and convictions and sentences affirmed.*

Reported by Ashok Kumar